

PUBLIC MATTER

FILED

JUL 21 2010

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

3

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-O-17338-DFM, Etc.
)	
ERIC THEODORE SMITH,)	
)	ORDER APPROVING STIPULATION &
Member No. 133287,)	ORDER OF INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

ORDER APPROVING STIPULATION

Finding that the stipulation is fair to the parties and that it adequately protects the public, the stipulation as modified by the court *post* is APPROVED and the stipulated discipline of disbarment is RECOMMENDED to the Supreme Court.

RULE 9.20

It is further RECOMMENDED that Eric Theodore Smith be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

CLIENT SECURITY FUND

Finally, it is RECOMMENDED that Eric Theodore Smith be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of



funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

STIPULATION MODIFICATIONS

The stipulation is modified as follows:

1. On page 8 of the stipulation, line 23, the first sentence in section V (FINANCIAL CONDITIONS, RESTITUTION) is deleted and the following sentence is inserted in its place:

Respondent must pay restitution to each of the clients listed in the chart in paragraph number 3 ante for the listed amount of advanced fees that the clients paid to Respondent together with interest thereon at the rate of 10 percent per year from the listed date that the clients employed Respondent, except that the date client Jean Lemenager employed Respondent is deemed to be July 31, 2009; the date client Anthony Perkins employed Respondent is deemed to be May 31, 2009; and the date client Karthikeyan Murugesan employed Respondent is deemed to be July 31, 2009.

2. On page 8 of the stipulation, line 28, the following text is inserted after the word "costs":

in accordance with Business and Professions Code section 6140.5. Any obligations to CSF for restitution/reimbursement, interest, or costs are enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

Any objection to these two modifications must be filed within 15 days after the service of this order by mail. If either party timely files an objection, the stipulation is deemed rejected and the order of involuntary inactive enrollment *post* is deemed vacated on the date the objection is filed without the necessity of further court order. If no timely objection is filed, the stipulation as modified remains approved, the order of involuntary inactive enrollment will become effective as provided *post*, and the Clerk of the State Bar Court is directed to transmit the record in this matter to the Supreme Court without further delay.

The effective date of the recommended discipline is the effective date of the Supreme Court order in this proceeding, which is ordinarily 30 days after the order is filed (Cal. Rules of Court, rule 9.18(a)).

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that ERIC THEODORE SMITH be involuntarily enrolled as an inactive member of the State Bar of California effective 23 days after the service of this order by mail (Rules Proc. of State Bar of Cal., rule 220(c)).

Dated: July 21, 2010.

A handwritten signature in black ink, appearing to read "Donald F. Miles", written over a horizontal line.

DONALD F. MILES
Judge of the State Bar Court

ORIGINAL

STATE BAR OF CALIFORNIA
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ERIC THEODORE SMITH, No. 133287
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 Irvine, CA 92618
 Telephone: (949) 222-6639

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

ERIC THEODORE SMITH,
 No. 133287,

A Member of the State Bar

) Case No. 09-O-17338, 09-O-17606, 09-O-18037,
) 09-O-18039, 09-O-18049, 09-O-18147, 09-O-18628,
) 09-O-18777, 09-O-18928, 09-O-18934, 09-O-18936,
) 09-O-18940, 09-O-19423, 09-O-19424, 10-O-01566,
) 10-O-01572, 10-O-02025, 10-O-02026, 10-O-02028,
) 10-O-02033, 10-O-02037, 10-O-02041, 10-O-02042,
) 10-O-02213, 10-O-02214, 10-O-02215, 10-O-02216,
) 10-O-02353, 10-O-03306, 10-O-03307, 10-O-03308,
) 10-O-03309

) **STIPULATION RE FACTS, CONCLUSIONS**
) **OF LAW AND DISBARMENT AND ORDER**
) **APPROVING**

IT IS HEREBY STIPULATED AND AGREED by and between the Office of the Chief
 Trial Counsel of the State Bar of California ("State Bar"), by and through Deputy Trial Counsel
 Christine Souhrada, and Respondent Eric Theodore Smith ("Respondent"), in accordance with
 Rule 133 of the Rules of Procedure of the State Bar of California as follows:

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1 **I. JURISDICTION**

2 Respondent was admitted to the practice of law in the State of California on February 25,
3 1998 and has been a member of the State Bar of California ever since that time.

4 **II. WAIVERS AND UNDERSTANDING OF THE PARTIES**

5 It is understood and acknowledged by the parties to this Stipulation re Facts, Conclusions
6 of Law and Disbarment ("Stipulation") that:

7 A. The proceedings listed by case number in the caption of this Stipulation are
8 entirely resolved by this Stipulation except as expressly set forth in this Stipulation.

9 B. The parties agree to be bound by the factual stipulations contained in this
10 Stipulation even if the conclusions of law or disposition are rejected or changed by the Supreme
11 Court.

12 C. The factual statements contained in this Stipulation constitute admissions of fact
13 and may not be withdrawn by either party, except with court approval.

14 D. Respondent acknowledges the provisions of Business and Professions Code
15 sections 6086.10 and 6140.7. Until costs are paid in full, Respondent will remain ineligible to
16 seek reinstatement to the practice of law pursuant to Rule 662(c) of the Rules of Procedure of the
17 State Bar of California. Respondent acknowledges that the Office of the Chief Trial Counsel has
18 informed him that as of April 8, 2010, the estimated costs in this matter are \$39.17. Respondent
19 further acknowledges that, should this Stipulation be rejected or should relief from the
20 Stipulation be granted, the costs in this matter may increase due to the cost of further
21 proceedings.

22 F. Respondent has been advised in writing in a separate document as of April 16,
23 2010, of any investigations or proceedings pending at the time of execution of this Stipulation
24 that are not resolved by this Stipulation (except for investigations, if any, by criminal law
25 enforcement agencies), identified by investigative case number or proceeding case number, and
26 complaining witness name, if any.
27
28

G. The parties are aware that if this Stipulation is approved, the Court will issue an order of inactive enrollment of Respondent under Business and Professions Code section 6007(c)(4) and Rule of Procedure 220(c).

III. STATEMENT OF ACTS OR OMISSIONS BY RESPONDENT AND CONCLUSIONS OF LAW WARRANTING DISBARMENT

A. PLEA OF NOLO CONTENDRE

Respondent hereby pleads nolo contendere to the facts and violations set forth in this stipulation and completely understands that his plea must be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c). Respondent has read the applicable provisions of Business and Professions Code section 6085.5¹ and rule 133(a)(5) of the Rules of Procedure of the State Bar of California.²

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¹ Business and Professions Code section 6085.5 states:

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- a. Admission of culpability.
- b. Denial of culpability.
- c. Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.)

² Rule 133(a)(5) of the Rules of Procedure of the State Bar of California states:

(a) A proposed stipulation as to facts, conclusions of law, and disposition shall set forth each of the following:

(5) a statement that respondent either

(i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or

(ii) pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include each of the following:

(a) an acknowledgement that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and

(b) if requested by the Court, a statement by the deputy trial counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the

B. STATEMENT OF FACTS

1. In late 2008, Respondent opened a loan modification law practice called "Modify Law Group" in an office located at 25 Mauchly, Suite 314, Irvine, CA 92618 (the "Mauchly office"). In mid-July 2009 to mid-August 2009, Respondent moved the Modify Law Group to 7201 Apricot Drive, Irvine, CA 92618 (the "Apricot office"). On September 7, 2009, Respondent moved the Modify Law Group from the Apricot office to a new office located at 7545 Irvine Center Drive, Irvine, CA 92618 (the "Irvine Center office").

2. Modify Law Group advertised on radio stations in various markets throughout the United States, sent out mass mailings in various markets throughout the United States, and advertised on the internet.

3. Respondent was employed by the following clients for the purpose of obtaining home loan modifications for each of those clients:

Case No.	Client	Date client employed Respondent	Advanced fees client paid to Respondent	Client's State of Residence and Location of Property
09-O-17338	Roger Sizemore	8/19/2009	\$4,500	Illinois
09-O-17606	Owen L. Aiona	6/30/2009	\$1,995	Hawaii
09-O-18037	James Ericksen	3/28/2009	\$1,247.50	Utah
09-O-18039	Robert J. Harden	7/2/2009	\$2,500	Michigan
09-O-18049	Marcia D. Moore	8/18/2009	\$1,250	Utah
09-O-18147	James Murphree	8/7/2009	\$2,000	Illinois
09-O-18628	Robert Bollman	8/27/2009	\$1,500	Maine
09-O-18777	Sherrie L. Gerry	8/10/2009	\$1,995	Utah
09-O-18928	Diane Tassone	7/20/2009	\$1,995	Massachusetts
09-O-18934	Deborah Wood	8/29/2009	\$1,500	Virginia
09-O-18936	Pam Kinzel	7/22/2009	\$2,495	Maryland
09-O-18940	Gerald L. Howard	8/31/2009	\$2,500	Maryland
09-O-19423	Jean Lemenager	7/2009	\$1,995	Massachusetts
09-O-19424	Juanita J. Thomas	7/23/2009	\$2,495	California
10-O-01566	Anthony Perkins	5/2009-6/2009	\$1,995	Utah
10-O-01572	Rema R. Lopez	7/8/2009	\$2,995	California
10-O-02025	Kevin Miller	8/5/2009	\$1,995	Illinois
10-O-02026	Helena Parker	6/25/2009	\$1,995	Arizona
10-O-02028	Daniel Morrow	7/7/2009	\$1,495	Indiana
10-O-02033	Ravi Nirula	8/6/2009	\$2,495	Hawaii
10-O-02037	Bryan and Rebecca Carlin	7/31/2009	\$2,900	Ohio
10-O-02041	Kelvin Gonzalez	12/31/2008	\$2,495	California
10-O-02042	Cary Revelle	7/9/2009	\$2,495	Illinois
10-O-02213	William J. Santangelo	8/25/2009	\$1,250	Pennsylvania
10-O-02214	Thomas M. Jones	7/20/2009	\$2,005	Hawaii

1	10-O-02215	Ken and Janet Krumpe	6/21/2009	\$2,495	Hawaii
2	10-O-02216	Karthikeyan Murugesan	7/2009	\$1,500	Ohio
3	10-O-02353	Wendy Skog	8/1/2009	\$1,400	Utah
4	10-O-03306	Kelley Rushin	6/20/2009	\$1,995	Virginia
5	10-O-03307	Thomas and Michelle Felkins	9/3/2009	\$1,995	Illinois
6	10-O-03308	Baida Dkhuka	8/5/2009	\$2,200	Illinois
7	10-O-03309	Paul Christensen	7/15/2009	\$1,300	Utah

4. Each of those clients listed above who resided outside the state of California entered into a contract for legal services with Respondent whereby Respondent agreed to modify their loans on properties in the states where they resided. Respondent is not presently, and has never been, licensed to practice law in any state other than California. Respondent knew that the clients and their properties were located in jurisdictions in which he was not entitled to practice law.

5. By mid-July 2009, Respondent was aware that he had accepted more loan modification clients than he could competently represent. Nevertheless, Respondent continued to accept new loan modification clients.

6. From November 19, 2009 to December 19, 2009 Respondent was suspended from the practice of law and was not eligible to practice for disciplinary reasons.

7. At no time did Respondent inform his clients of his suspension or his ineligibility to practice law.

8. Numerous clients were told by Respondent or Respondent's representatives at Modify Law Group that Respondent would refund their advance attorney fees if Respondent did not obtain a loan modification for the clients.

9. Respondent failed to obtain loan modifications for the clients listed above, and failed to perform any other legal services of any value for the clients listed above in connection with negotiating or obtaining home mortgage loan modifications. Thus, Respondent did not earn the advanced fees collected from the clients.

10. Respondent did not provide any refund to the clients listed above.

11. In mid to late 2009, Respondent disconnected his office phone lines and clients were unable to reach him.

C. CONCLUSIONS OF LAW

The parties hereby stipulate and Respondent specifically admits that by his conduct described above, Respondent engaged in acts of serious misconduct warranting disbarment as follows:

1. By failing to obtain loan modifications or perform any other legal services of value in the representation of the above-listed clients, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

2. By failing to obtain loan modifications for the clients listed above, failing to perform any other legal services of any value for the clients listed above in connection with negotiating or obtaining a home mortgage loan modification, and disconnecting his phone lines, Respondent effectively terminated representation of his clients, and failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his clients, thereby Respondent improperly withdrew from representation and abandoned the above-listed clients in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

3. By failing to refund promptly any part of the advanced fees paid to Respondent by each of the clients listed above, despite having not earned that fee, Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

4. By entering into contracts for legal services with clients in states in which Respondent was not entitled to practice, to obtain modifications of loans on properties in those states, Respondent practiced law in jurisdictions where to do so would be a violation of the regulations of the profession in those jurisdictions, in willful violation of Rules of Professional Conduct, rule 1-300(B).

5. By failing to inform his clients that he was suspended from November 19, 2009 to December 19, 2009 and was not eligible to practice law or represent them during that period, Respondent failed to inform his clients of a significant development in a matter with regard to

1 which the he had agreed to provide legal services in willful violation of Business and Professions
2 Code, section 6068(m).

3 6. By entering into an agreement for representation with, and by charging and
4 collecting fees from the clients in Ohio, Arizona, Florida, Michigan, Kentucky, Tennessee, and
5 New York when she was not licensed to practice law in those states, Respondent willfully
6 entered into an agreement for, and charged and collected, illegal fees in willful violation of Rules
7 of Professional Conduct, rule 4-100(A).

8 **D. AGGRAVATION**

9 Respondent has a prior record of discipline. On November 19 2009, Respondent was
10 suspended from the practice of law for 30 days in case no. 08-O-11835. In that matter,
11 Respondent stipulated to practicing law when he was not entitled to do so and thereby failing to
12 support the law of California in violation of Business and Professions Code, sections 6125, 6126,
13 and 6068(a), and failing to maintain a current address with the State Bar.

14 Respondent's clients were seriously harmed by the above described misconduct. Most, if
15 not all, of the clients who hired Respondent to assist them with their modification did so because
16 they were financially distressed. Thus, the loss of the use of the money they had paid to
17 Respondent for services which were not performed, caused significant harm to Respondent's
18 clients. A number of the clients ultimately lost their homes.

19 Respondent's misconduct involving over 30 separate client matters demonstrates a
20 pattern of misconduct.

21 **IV. AUTHORITIES SUPPORTING DISBARMENT**

22 The parties hereby stipulate that Respondent's violations as described above warrant
23 Respondent's disbarment.

24 Standard 2.4 of the Standards for Attorney Sanctions for Professional Misconduct
25 addresses an attorney's failure to perform or failure to communicate:

- 26 (a) Culpability of a member of a pattern of wilfully failing to perform services
27 demonstrating the member's abandonment of the causes in which he or she
28 was retained shall result in disbarment.

1 Respondent's failure to perform in over 30 separate client matters demonstrates
2 abandonment of those clients' cases.

3 In the case of *In re Ronald Robert Silverton*, (2005) 36 Cal.4th 81, the Supreme Court
4 discussed the fact that the Standards For Attorney Sanctions For Professional Misconduct are
5 entitled to great weight and the State Bar Court should follow their guidance whenever possible.
6 (*Id.* at 92)

7 Where there are abandonments of numerous clients, disbarment has been determined by
8 the Supreme Court to be the appropriate discipline, even when the attorney has no prior record of
9 discipline. See *Coombs v. State Bar*, (1989) 49 Cal. 3d 679 [Disbarment was appropriate where
10 the attorney was found culpable of misconduct in 13 separate client matters which included,
11 among other violations, abandonment of clients, failure to return client files, false representations
12 that services for which he had been retained had been performed, failure to provide an
13 accounting of fees, and failure to return unearned fees.] See also *In re Billings*, 50 Cal. 3d 358,
14 (Cal. 1990) [Disbarment was appropriate where the attorney completely abandoned 12 clients,
15 partially abandoned three additional clients, refused to refund unearned fees, practiced law while
16 on suspension, and was criminally convicted of driving under the influence.]

17 In the present matter, Respondent committed misconduct in more than 30 separate client
18 matters, twice the number as in *Billings* and *Coombs*. In addition, Respondent has a prior record
19 of discipline. Coupled with Respondent's failure to refund fees, his practice of law in
20 jurisdictions in which he was not admitted, and his failure to communicate with clients,
21 disbarment is appropriate.

22 **V. FINANCIAL CONDITIONS, RESTITUTION.**

23 Respondent must pay restitution (including the principal amount, plus interest of 10
24 percent per annum calculated from the date the client paid respondent) to the clients listed above
25 in the Statement of Facts for the full amount the client paid to respondent. If the Client Security
26 Fund ("CSF") has reimbursed one or more of the clients for all or any portion of the principal
27 amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus
28 applicable interest and costs.

Respondent waives any objection to payment by the State Bar Client Security Fund upon a claim for the principal amount of restitution set forth herein.

VI. DISCIPLINE


The parties hereby stipulate that Respondent shall be DISBARRED.

AGREED AND ACCEPTED:

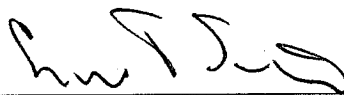
Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: July 6, 2010

By: 
Christine Souhrada
Deputy Trial Counsel

DATED: July 3, 2010

By: 
Eric Theodore Smith
Respondent

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 21, 2010, I deposited a true copy of the following document(s):

ORDER APPROVING STIPULATION & ORDER OF INVOLUNTARY INACTIVE
ENROLLMENT

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISBARMENT

in a sealed envelope for collection and mailing on that date as follows:

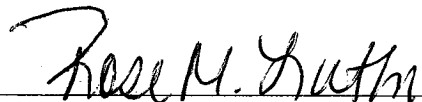
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ERIC T. SMITH
7201 APRICOT DR
IRVINE, CA 92618

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CHRISTINE SOUHARDA, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 21, 2010.



Rose Luthi
Case Administrator
State Bar Court